

RECORDATION NO. 29578 - <sup>A</sup>FILED

DEC 17 '10 -10 05 AM

SURFACE TRANSPORTATION BOARD

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

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December 17, 2010

Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

Dear Section Chief,

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Assignment and Assumption Agreement, dated as of October 29, 2010, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Lease being filed with the Board under Recordation Number 29578.

The names and addresses of the parties to the enclosed document are:

Assignor: NARCAT, LLC  
480 West Dussel Drive, Suite R  
Maumee, OH 43537

Assignee: The Andersons, Inc.  
480 West Dussel Drive  
Maumee, OH 43537

Chief  
Section of Administration  
December 17, 2010  
Page 2

A description of the railroad equipment covered by the enclosed document is:

100 gondola railcars within the series CHTT 386314 - CHTT 386417 as more particularly set forth in the attachment to the document.

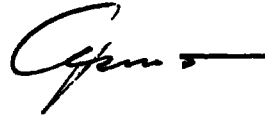
A short summary of the document to appear in the index is:

Assignment and Assumption Agreement.

Also enclosed is a check in the amount of \$41.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Alvord', followed by a horizontal line.

Robert W. Alvord

RWA/sem  
Enclosures

DEC 17 '10 -10 05 AM

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**SURFACE TRANSPORTATION BOARD**

This ASSIGNMENT AND ASSUMPTION AGREEMENT, (this "Agreement"), is between NARCAT LLC, a Delaware limited liability company, of Suite R, 480 W. Dussel Drive, Maumee, Ohio 43537 (the "Assignor") and The Andersons, Inc., an Ohio corporation, of 480 W. Dussel Drive, Maumee, Ohio 43537 (the "Assignee") and is dated as of October 29, 2010 ("Effective Date").

**RECITALS**

WHEREAS, Railcar, Ltd., as lessor, and Union Pacific Railroad Company ("Lessee") entered into a certain Master Lease Agreement dated as of July 22, 2002 (the "Master Lease"); and

WHEREAS, Railcar, Ltd, assigned the Master Lease to Cap Acquire, LLC on or about February 12, 2004, evidence of which is recorded with the Surface Transportation Board ("STB") pursuant to 49 U.S.C. §11301, at recordation number 24816-A, which was subsequently assigned to Assignor on or about February 12, 2004, evidence of which is recorded with the STB pursuant to 49 U.S.C. §11301 at recordation number 24816-F; and

WHEREAS, Assignor and Lessee entered into Schedule No. 3, Deal #C01613, dated effective as of September 1, 2010, (collectively with Master Lease, the "Lease") providing for the lease of certain Equipment from Assignor subject to the terms and conditions set forth therein

WHEREAS, the Assignor wishes to assign to Assignee Assignor's rights under the Lease as of the Effective Date for the purpose of allowing Assignee to lease Equipment owned by Assignee to Lessee; and

WHEREAS, such an assignment is authorized by the express provisions of the Lease;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows.

**AGREEMENT**

1. **Definitions.** Capitalized terms used herein without definition shall have the meanings assigned to them in Section 4 of this Agreement.

2. **Assignment.** On and after the Effective Date, Assignor assigns to the Assignee Assignor's rights and obligations under the Lease for the purpose of allowing Assignee to lease Equipment owned by Assignee to Lessee. Notwithstanding the foregoing, Assignor shall continue to act as Lessor under the Lease for Equipment owned by Lessor.

3. **Acceptance of Assignment; Assumption of Obligations; Effect of Assignment.** The Assignee accepts the assignment contained in Section 2 hereof and, on and after the Effective Date, assumes the obligations of Lessor thereunder for all railcars owned by Assignee which are leased to Lessee. On and after the Effective Date, the Assignee shall be deemed to

stand in the place of the Assignor for all purposes under the Lease and each reference in the Lease with regard to Assignor acting as Lessor shall be deemed to mean the Assignee. Assignor with respect of the period on and after the Effective Date is released of all obligations as the Lessor for any Equipment owned by Assignee which is leased to Lessee.

4. **Definitions.** Except as otherwise specified or as the context may otherwise require, the following terms have the meanings set forth below whenever used in this Agreement (terms defined in the singular to have a correlative meaning when used in the plural and vice versa).

**Effective Date:** as of October 29, 2010.

**Equipment:** the units of railroad equipment set forth on Exhibit A.

**Lease:** Master Lease Agreement dated as of July 22, 2002 and its related Schedule No. 3, Deal #C01613, dated effective as of September 1, 2010.

**Lessee:** Union Pacific Railroad Company, a Delaware corporation.

5. **Amendments.** No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

6. **Notices.** All notices, requests or other communications to or upon any party hereto in connection herewith shall be given to each party at the address set forth in the first paragraph of this Agreement.

7. **Headings.** The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

8. **Counterparts.** This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

9. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of Ohio, without giving effect to its conflict of law rules.

10. **Entire Agreement.** This Agreement represents the entire agreement of the parties with respect to the subject matter hereof and thereof and supersedes and cancels any prior oral or written agreement, letter of intent or understanding with respect to such subject matter.

11. **Recordation.** The Assignor and the Assignee agree that a Memorandum of this Agreement may be recorded with the STB to evidence the assignment by the Assignor to the Assignee of the Assignor's rights and obligations, as described above, under the Lease.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto on the date first above written.

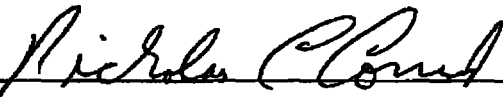
NARCAT LLC

By: 

Name: Richard R. George

Title: Manager

THE ANDERSONS, INC.

By: 

Name: Nicholas C. Conrad

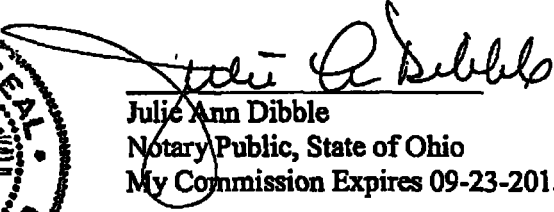
Title: Vice President, Finance and Treasurer

STATE OF OHIO )

COUNTY OF LUCAS )SS:

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of November, 2010, by Richard R. George, the Manager of NARCAT LLC, a Delaware limited liability company, on behalf of the company.

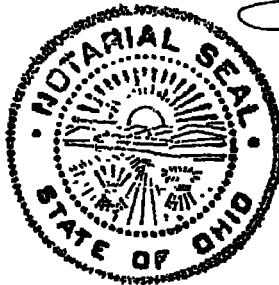


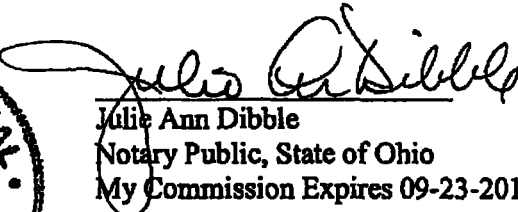
  
Julie Ann Dibble  
Notary Public, State of Ohio  
My Commission Expires 09-23-2015

STATE OF OHIO )

COUNTY OF LUCAS )SS:

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of November, 2010, by Nicholas C. Conrad, Vice President, Finance and Treasurer of The Andersons, Inc., an Ohio corporation, on behalf of the corporation.



  
Julie Ann Dibble  
Notary Public, State of Ohio  
My Commission Expires 09-23-2015

**EXHIBIT A**

**Equipment List**

1	CHTT386314	26	CHTT386341	51	CHTT386368	76	CHTT386393
2	CHTT386315	27	CHTT386342	52	CHTT386369	77	CHTT386394
3	CHTT386316	28	CHTT386343	53	CHTT386370	78	CHTT386395
4	CHTT386317	29	CHTT386344	54	CHTT386371	79	CHTT386396
5	CHTT386318	30	CHTT386345	55	CHTT386372	80	CHTT386397
6	CHTT386319	31	CHTT386346	56	CHTT386373	81	CHTT386398
7	CHTT386320	32	CHTT386347	57	CHTT386374	82	CHTT386399
8	CHTT386321	33	CHTT386348	58	CHTT386375	83	CHTT386400
9	CHTT386322	34	CHTT386349	59	CHTT386376	84	CHTT386401
10	CHTT386323	35	CHTT386350	60	CHTT386377	85	CHTT386402
11	CHTT386324	36	CHTT386351	61	CHTT386378	86	CHTT386403
12	CHTT386325	37	CHTT386352	62	CHTT386379	87	CHTT386404
13	CHTT386326	38	CHTT386353	63	CHTT386380	88	CHTT386405
14	CHTT386327	39	CHTT386354	64	CHTT386381	89	CHTT386406
15	CHTT386328	40	CHTT386355	65	CHTT386382	90	CHTT386407
16	CHTT386329	41	CHTT386356	66	CHTT386383	91	CHTT386408
17	CHTT386330	42	CHTT386357	67	CHTT386384	92	CHTT386409
18	CHTT386331	43	CHTT386358	68	CHTT386385	93	CHTT386410
19	CHTT386333	44	CHTT386359	69	CHTT386386	94	CHTT386411
20	CHTT386334	45	CHTT386361	70	CHTT386387	95	CHTT386412
21	CHTT386335	46	CHTT386363	71	CHTT386388	96	CHTT386413
22	CHTT386336	47	CHTT386364	72	CHTT386389	97	CHTT386414
23	CHTT386338	48	CHTT386365	73	CHTT386390	98	CHTT386415
24	CHTT386339	49	CHTT386366	74	CHTT386391	99	CHTT386416
25	CHTT386340	50	CHTT386367	75	CHTT386392	100	CHTT386417

**CERTIFICATION**

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: \_\_\_\_\_

12/17/10



\_\_\_\_\_  
Robert W. Alvord